FIFTH DIVISION
December 7, 2012

No. 1-10-3230

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 12087
	)	
TYRONE HOLLOMAN,	)	
	)	Honorable
Defendant-Appellant.	)	Neera Lall Walsh,
	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred in the judgment.

ORDER

¶ 1 *HELD*: The record showed the trial court properly considered mitigation evidence before sentencing defendant to serve consecutive sentences. Defendant's allegations that he was given consecutive sentences as punishment for not accepting a plea agreement is not supported by the record; the trial court's decision to give the jury an enhancement instruction for personally discharging a weapon during the commission of a home invasion is supported by the record.

¶ 2 After a jury trial, Defendant Tyrone Holloman, was

convicted of four counts of attempt first degree murder (720 ILCS 5/9-1(a)(1)8-4 (West 2006)), four counts of aggravated discharge of a firearm against a peace officer (720 ILCS 5/24-1.2(a)(3) (West 2006)), two counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2006)), one count home invasion (720 ILCS 5/12-11(a)(4) (West 2006)), and one count for personal discharge of a firearm during a home invasion. The trial court ordered Holloman to serve consecutive sentences in prison, totaling 118 years.

¶ 3 For the following reasons, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 Holloman was arrested and charged with the crimes previously listed in addition to aggravated vehicular hijacking, which was nol-prossed. During pre-trial proceedings, Holloman was twice found to be fit to stand trial with prescribed medications for a depressive disorder.

¶ 6 A summary of the evidence at trial showed that just before noon on May 8, 2007, Holloman entered LaSalle Bank, 3010 S. Kedzie Ave., in Chicago, wearing a floral-print dress, black wig, sunglasses and white gym shoes. He approached a security guard, pointed a gun at him and demanded his weapon. The security guard placed his hands in the air while Holloman took his gun from his holster. Holloman then fired a shot into the

bank's ceiling and told everyone in the bank to get down. He warned, "if I don't go home, ain't nobody going home." At the sound of the gunshot, people in the bank started screaming and everyone dropped to the floor.

¶ 7 At gunpoint, the security guard escorted Holloman to teller Jennifer Fentry's station. Fentry had just taken in approximately $20,000 in commercial deposits.

¶ 8 Holloman said, "just give me all the money" and warned, "I don't want to see any police." Fentry quickly complied, throwing all the money from the drawer onto the counter. After filling up his bag with money, Holloman ran out of the door, heading north on South Kedzie in the direction of 28th Street.

¶ 9 Fentry activated a "hold-up" alarm, which sent an instantaneous message to the Chicago Police Department. Shortly afterwards, a pair of nearby Chicago police officers heard a police flash message describing the robbery and a description of the offender. The officers observed Holloman running north, wearing a dress and a wig. Officer Camilo Parrales gave chase, ordering Holloman to halt. Officer Parrales chased Holloman up South Kedzie to 28th Street, where Holloman turned west down an alley towards South Sawyer. Officer Parrales observed Holloman run though a side door of a house at 2801 South Sawyer. Knowing Holloman was armed from the warning on the police radio, Officer

Parrales did not follow Holloman into the house, instead, he took cover along the side of the house.

¶ 10 Inside the house, Yolanda Sanchez and her daughter Marisol were at the dining room table eating lunch with Yolanda's 3 year-old granddaughter when Holloman burst in through the back door. Holloman did not say anything. He looked around the house then began digging though his large handbag, causing money to fall out. Both Yolanda and Marisol believed he was struggling to pull out a gun, so they ran out of the house through the back door. Officer Parrales escorted the three, along with Marisol's other children, who were playing in the yard, down the alley to a police car.

¶ 11 Police sergeants William Vick and Ramon Ferrer, along with officers Joseph Rodriguez and Eduardo Almanza arrived at the scene. From a window in the house, Holloman began shooting in the direction of the police officers. The officers took cover behind their squad cars while windows exploded and bullets whizzed by. Eventually a SWAT team arrived and the officers managed to arrest Holloman. None of the officers returned fire on Holloman and there were no injuries.

¶ 12 The Sanchez's neighbor, Crystal Merkel, testified that she observed the shooting from her home next door. She observed Holloman shoot at the police. She allowed two officers, who were

shielding themselves behind a vehicle, to come into her house through the back door for safety. After Holloman was arrested, Merkel observed that her home was damaged from Holloman's bullets.

¶ 13 The SWAT team coordinator, Officer Ricardo Mancha, testified that upon arrival to the scene he placed a middle school located across the street on lockdown. He then set up negotiations between trained negotiators and Holloman in an effort to convince Holloman to turn himself in. Negotiations involved a phone call to Holloman's girlfriend Michelle Villafane, who testified that she received a call from Holloman where he told her that he loved her, that he made a mistake and he was sorry. She asked what he was talking about, he told her that he had just robbed a bank and probably hurt a police officer. At some point after the phone call, Holloman surrendered to police.

¶ 14 Chicago police forensic investigator Marvin Otten testified he recovered two handguns, 34 shell casings, several fired bullets, bullet fragments from two vehicles, a dress, a wig, a black slip, sunglasses, a black bag, an empty ammunition box, unfired bullets, and $12,297 in cash stuffed in various pieces of furniture inside the Sanchez house.

¶ 15 Detective James Hall recovered a black duffel bag from

the railroad tracks just east of Kedzie. Inside the bag was a roll of duct tape, a knife, a screwdriver, a jacket and white gym shoes. Detective Hall showed the bag and its contents to Holloman while he was in custody and was given Miranda warnings. Holloman identified the bag and its content as his.

¶ 16 Villafane testified that she was with Holloman when he purchased the gun for $683.75 in cash.

¶ 17 At the close of the evidence, the State rested and Holloman moved for a directed verdict, which was denied. Holloman did not present any evidence.

¶ 18 In closing arguments, Holloman argued that Yolanda Sanchez was not threatened with the imminent use of force because she was not shot at, nor did she actually see a gun. The State responded that it would be up to the jury to determine when the home invasion ended, arguing that it only ended when Holloman was arrested.

¶ 19 At the jury instruction conference, Holloman objected to home invasion instructions including a personal discharge firearm enhancement, and to verdict forms asking the jury to find that he personally discharged a handgun during the home invasion. Holloman's counsel argued that there was no evidence presented at trial that Holloman had fired the handgun during the home invasion since the Sanchez family was already out of their house

by the time he fired the gun. The State responded that the home invasion was still being committed, even though the victims were not present in the home at the time defendant fired the gun. The judge gave the instruction over the defense's objections, finding that a reasonable trier of fact might find that Holloman did in fact have the firearm and discharge it during the commission of the home invasion. The jury found Holloman guilty of four counts of attempt first degree murder, four counts of aggravated discharge of a firearm, two counts of armed robbery, home invasion, and personal discharge of a firearm during the home invasion.

¶ 20 Holloman filed a motion for new trial and a supplemental motion for a new trial, arguing, *inter alia*, that the inclusion of the personal discharge of a firearm instruction in the home invasion instruction was error because the Sanchez family was outside of the house when he fired the gun. The State responded that the home invasion was not complete when the victims ran out of their home. After a hearing, the trial judge denied both the motion for a new trial and the supplemental motion for a new trial.

¶ 21 At the sentencing hearing, in aggravation, the State presented witness Kimberly Bullock, who described being carjacked and kidnapped at approximately 4 a.m. on May 8, 2007, by a man

who said he needed her car and who was wearing a floral-print dress. Bullock identified Holloman and the dress he was wearing. She described how she and a friend were sitting in her car talking when Holloman approached the driver's side window, pointed a gun at her and told them both to get out. She described how scared she was and how she tried to give Holloman money. She said that after a second attempt at offering Holloman whatever money she had, he took it and told her and her friend to sit in the back seats and lock the doors. She testified that she and her friend complied and Holloman drove off. She described how she escaped by jumping out of the car when Holloman stopped at a stop light, and how she hurt the side of her body by doing so. She also described how her friend jumped out of the car after her while Holloman was driving. She testified that they found each other and flagged down another driver to call the police. They then went to the hospital where they were treated for injuries they sustained while escaping from the car.

¶ 22 In mitigation, Villafane testified about her relationship with Holloman, how he was a father figure to her preteen son and testified that they struggled financially right before the events of this case.

¶ 23 Holloman's mother, Bernice Holloman, testified that defendant was a good, loving and hardworking man. On his own

behalf, Holloman acknowledged that his actions on May 8, 2007, were "wrong" and testified that he acted out of fear of homelessness and jail because he was going to lose his job. He testified that he did not intend to hurt anyone, but was trying to make the police shoot him so that he would not have to go to jail because he feared being sexually and physically abused in jail. He testified that he had changed since he committed the crime and that the person who committed the crime no longer existed. He asked the court to have mercy on him and give him a second chance.

¶ 24 Defense counsel argued that Holloman had never been convicted of any crime prior to the events here and had been diagnosed with a "depressive disorder" while in custody, had a consistent history of employment, and was a strong candidate for rehabilitation.

¶ 25 Defense counsel requested the trial court consider a presentence investigation report that stated at the time of the offenses, Holloman was earning $4,000 per month and had $700 in expenses per month. The report stated that Holloman is a 39 year-old father of eight with a high school education, some college and a stable employment history. It stated that he was raised by both parents in separate homes and that he experienced physical, sexual and emotional abuse while living with his

father. It stated that his mother was a good provider until she began abusing drugs in his high school years. It also stated that he was diagnosed with depression and is currently prescribed Prozac and Trazadone and is receiving those medications while in prison.

¶ 26 In aggravation, the State argued that Holloman should have an appropriate sentence based on the severity of the crime. The State argued that Holloman's actions on May 8, 2007, were planned, in that they involved purchasing a weapon, wearing a disguise, hiding a change of clothes outside of the bank, and carjacking a vehicle hours prior to the bank robbery. The State further argued that Holloman's actions were intentional, in that he fired more than 30 shots in the direction of at least four police officers, and reckless, in that he fired those shots during the day in a residential neighborhood across the street from a middle school. The State argued the sentences should run consecutively in order to protect the public.

¶ 27 Prior to sentencing, the trial court stated it considered the arguments in aggravation and mitigation, the presentence investigation report, Holloman's criminal history and a mitigation report from the Cook County Public Defender's office. The trial court noted that it thought the crime was intentional and planned, and that it was disingenuous of Holloman

to claim that no one was hurt by his actions. The trial court stated: "It is remarkable, absolutely remarkable, that there are no dead bodies in this case."

¶ 28 The trial court stated that it would impose the minimum sentence within the range for each of the counts, based on the fact that Holloman did not have a criminal history. The trial court stated it believed Holloman is a threat to society and imposed consecutive sentences for all but the four aggravated discharge of a firearm counts, for a total of 118 years. The four counts of attempt first degree murder amounted to 80 years, the two counts of armed robbery was 12 years total, and the home invasion count was 6 years plus the 20-year enhancement based on personal discharge of a weapon during the home invasion. Four counts of aggravated discharge to a police officer were 6 years each, running concurrently and merging into the attempt first degree murder counts.

¶ 29 The defendant filed this timely appeal.

¶ 30 ANALYSIS

¶ 31 Holloman appeals from the trial court's sentencing order and his conviction of discharging a firearm during the commission of a home invasion. Holloman claims the trial court committed plain error when it imposed consecutive sentences because: (1) the court did not consider mitigating evidence when

it sentenced defendant to consecutive terms and; (2) defendant was offered a sentence of 28 years in plea bargaining but the court imposed a consecutive sentence of 118 years after his conviction for the purpose of punishing defendant for exercising his right to a jury trial. Holloman also claims the offense of home invasion had already been completed when he fired his weapons because the family had fled the house, therefore, his conviction for firing a firearm in the commission of a home invasion should be reversed.

¶ 32 The State contends Holloman has forfeited his sentencing claims because he failed to object at sentencing and did not preserve the issue in a post-sentencing motion. The State also claims Holloman was properly convicted of discharging a firearm during the commission of a home invasion.

¶ 33 It is well established that a trial court has broad discretionary authority in sentencing a criminal defendant. *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007). An appellate court typically shows great deference to a trial court's sentencing decision since the trial court is in a better position to decide the appropriate sentence. *Id.* A trial court's sentencing decision is not overturned absent an abuse of discretion. *Id.*

¶ 34 Trial Court's Consideration of Mitigating Evidence

¶ 35 Holloman asks this court to excuse forfeiture of his sentencing claims under the plain-error doctrine. The plain-error doctrine allows a reviewing court to consider un-preserved error when: (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatens to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is so serious that it affects the fairness of the defendant's trial and challenges the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 556 (2007).

¶ 36 Holloman argues that the imposition of a consecutive sentence here falls under the second prong of the plain-error test because the trial court sentenced him without properly considering mitigating evidence. Therefore, the error involves fundamental fairness and the integrity of the judicial process.

¶ 37 The burden of persuasion remains with the defendant under both prongs of the plain-error test. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). The first step of plain error review is to determine whether any error occurred. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009).

¶ 38 A sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial

court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 39 The Illinois Constitution requires that penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). This constitutional mandate calls for the balancing of the retributive and rehabilitative purposes of punishment. *Id.* This balancing process requires careful consideration of all factors in aggravation and mitigation, including, *inter alia*, the defendant's age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of the defendant's conduct in the commission of it. *Id.*

¶ 40 Holloman claims the trial court ignored substantial mitigating evidence such has his depressive disorder, his law-abiding life prior to his crime, his lack of any criminal background, his steady employment history, his strong family ties and his rehabilitative potential.

¶ 41 A trial court is presumed to have considered all

mitigating factors absent some indication to the contrary, other than the length of the sentence imposed. *People v. Madura*, 257 Ill. App. 3d 735, 740 (1994). Further, the trial court is not required to "recite and assign value to each factor in mitigation upon which it is relying." *Id.* at 740-41.

¶ 42 Prior to sentencing in this case, the trial court took a recess in the proceedings to review the material contained in a pre-sentence report prepared by the Cook County Public Defender. The court also heard testimony at the sentencing hearing about defendant and his background and his mental health diagnosis after being charged. Although the trial court did not specifically state that it considered Holloman's mental condition, his employment history, family ties, age and rehabilitative potential, the trial court stated that it considered all the factors in aggravation and mitigation that were presented to it. The defendant has not proffered evidence in the record to show the trial judge did not consider all of the proper mitigating factors, other than the length of the sentence itself. The court is presumed to have properly considered all the mitigating evidence unless there is evidence otherwise. *Id.* at 740. Accordingly, we presume the trial court considered all mitigating evidence when it sentenced defendant to consecutive terms. *Id.*

¶ 43 Consecutive Sentences

¶ 44 Under section 5-8-4(c)(1) of the Unified Code of Corrections, a court may sentence a defendant to consecutive terms if it finds it must do so to protect the public from the defendant. 730 ILCS 5/5-8-3(c)(1) (West 2006). Under the Code:

> "The court may impose consecutive sentences in any of the following circumstances:
>
> (1) If, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." *Id.*

¶ 45 Holloman was convicted of four counts of attempt first degree murder, four counts of aggravated discharge of a firearm against a peace officer, two counts of armed robbery, home invasion, and personal discharge of a firearm during the home invasion. The court sentenced defendant to the minimum statutory term for each offense, citing his lack of prior criminal background. However, the trial court ordered his sentences

served consecutively, rather than concurrently, because it found that defendant was dangerous and that the public needed protection from him.

¶ 46 Holloman claims the court sentenced him to a consecutive sentences totaling 118 years as a punishment because he demanded a jury trial and rejected an offer of a 28-year sentence negotiated in plea discussions, citing *People v. Dennis*, 28 Ill. App. 3d 74 (1975).

¶ 47 In *Dennis*, plea negotiations were conducted which included the trial judge. Dennis was offered a sentence of two to four years if he pled guilty to the charge of armed robbery. *Dennis*, 28 Ill. App. 3d at 74. Dennis rejected the offer. After a jury trial, Dennis was convicted and the court sentenced him to a term of 40 to 80 years. Dennis filed a post conviction petition which alleged the 40- to 80-year sentence was imposed to punish him for exercising his right to a jury trial. *Id.* The trial court dismissed the petition. However, the appellate court reduced the defendant's sentence to 6 to 18 years and held that the interests of justice required a sentence reduction. In doing so, the court issued the following admonition:

> "Finally, we wish to make it clear that our holding that petitioner suffered a constitutional deprivation which must be

> remedied is limited to the facts of the instant case, namely, a sentence imposed following a jury trial approximately 20 times greater than that offered during plea negotiations. We do not intend it to erode the well-established principle that a mere disparity between the sentence offered during plea bargaining and that ultimately imposed, of itself, does not warrant the use of our power to reduce a term of imprisonment imposed by the trial court." *Id.* at 78 (citing *People v. Hill*, 58 Ill. App. 2d 191, 206 (1964)).

¶ 48 The *Dennis* case does not aid Holloman. The *Dennis* court stated that its decision was limited to a situation where the sentence imposed after a jury trial is 20 times greater than the sentence offered in plea negotiations. *Id.* The 118-year consecutive sentence the trial court imposed here after the trial is less than 20 times the 28-year sentence offered in plea negotiations.

¶ 49 We also note the *Dennis* court reduced defendant's sentence to 6 to 18 years. The maximum sentence imposed by the

Dennis court is more than four times as great as the 2- to 4-year sentence offered in plea negotiations. Holloman's 118-year sentence is a little over four times as great as the negotiated offer of 28 years, a sentence which is proportional to the corrected sentence imposed by the appellate court in *Dennis*.

¶ 50 Moreover, the record supports the trial court's finding that the defendant is dangerous and his sentence should be consecutive to protect the public. The record shows that on the date of the offence, Holloman entered a bank while armed with a firearm. He grabbed a security guard's gun out of the holster while pointing his weapon at the guard. He fired a shot in the ceiling of the bank while robbing it, terrorizing the customers. After fleeing from the bank, he invaded a private home while armed and caused the occupants to flee. While in the home he fired over 30 rounds from his weapons at police officers, endangering the officers, school children in a nearby school as well as people in the neighborhood. At the sentencing hearing defendant was identified as the individual who at 4 a.m. on the day of the bank robbery, hijacked an automobile while armed, ordered the occupants of the car into the back seats and drove away with the occupants of the vehicle still inside. The occupants suffered injuries that required hospital treatment when they leaped from the vehicle to escape from the defendant.

¶ 51 The record supports the finding of the court that the defendant is a dangerous person and that the public needs protection from him. The disparity of the sentence offered during plea negotiations and the sentence ultimately imposed here does not, standing alone, establish that the sentence was imposed as a punishment because defendant exercised his right to a jury trial. *Id.* We affirm the sentence entered by the trial court.

¶ 52 Jury Instructions

¶ 53 Next, Holloman claims the trial court erred in giving the jury instructions for a sentencing enhancement for personally discharging a firearm during the commission of a home invasion (IPI Criminal, No. 28.02 (4th ed. 2000)).

¶ 54 The purpose of jury instructions is to convey to the jury the correct principles of law applicable to the evidence so that the jury may reach a correct conclusion according to the law and the evidence. *People* v. *Ingram*, 382 Ill. App. 3d 997, 1007 (2008). Whether to provide a particular jury instruction lies within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion. *Webber v. Wight & Company*, 368 Ill. App. 3d 1007, 1020 (2006).

¶ 55 A home invasion in which the defendant "during the commission of the offense personally discharges a firearm" is a

Class X felony for which 20 years shall be added to the term of imprisonment. 720 ILCS 5/12-11(a)(3), (c) (West 2006); 720 ILCS 5-12-11(a)(4), (c) (West 2006).

¶ 56 Holloman claims the sentencing enhancement does not apply to him because the home invasion was complete when he fired his gun because the family had fled the premises. The State contends the home invasion was not complete until Holloman vacated the Sanchez's home and, thus, the home invasion was still taking place when Holloman fired his gun from the Sanchez's home at police.

¶ 57 Under section 12-11(a)(4) of the Criminal Code of 1961, a person commits the criminal offense of home invasion when without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present, uses force or threatens the imminent use of force upon any person within the dwelling whether or not injury occurs and during the commission of the offense personally discharges a firearm. 720 ILCS 5/12-11(4) (West 2006).

¶ 58 The gravamen of the offense of home invasion is unauthorized entry. *People v. Fox*, 114 Ill. App. 3d 593, 597 (1983). The statute is silent as to when a home invasion ends.

¶ 59 Holloman cites *People v. Mitchell*, 136 Ill. App. 3d 205

(1985), in support of his claim that the home invasion was "complete" when he fired his gun at police. However, we cannot say *Mitchell* supports Holloman's claim because, unlike this case, the defendant in *Mitchell* claimed he was invited into the dwelling and fought with the occupants in self-defense. *Mitchell*, 136 Ill. App. 3d at 207. The jury did not find the defendant's testimony credible. *Id.* at 208.

¶ 60 In addition, we cannot say the appellate court in *Mitchell* used the word "complete" to mean the crime had ended. Instead, the court in *Mitchell* used the word "complete" to mean that the defendant committed the crime of home invasion once he entered the victims' apartment. *Id.* ("the offense would have been completed once the defendant entered [the victims'] apartment and threatened the occupants while carrying the .22 rifle.").

¶ 61 Holloman has not presented any authority to show that the offense of home invasion ends once the occupants vacate the dwelling. In this case, the Sanchez family had been dispossessed of their home by an armed assailant who still occupied their home. Holloman repeatedly fired his weapon while still in the home. Holloman fired a weapon at police officers from the home, conducted negotiations with the SWAT team while in the home, and

surrendered to police while in the home. We cannot say no reasonable person could find that the home invasion was still being committed when defendant fired his weapon from the Sanchez home.

¶ 62 Therefore, we cannot say the trial court abused its discretion in instructing the jury on the sentencing enhancement for personally discharging a weapon during the offense of a home invasion.

¶ 63 CONCLUSION

¶ 64 For the foregoing reasons, we affirm the judgment of the circuit court.